IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
v.	)	C.A. NO.: 03-394 E
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	

PLAINTIFF'S REQUESTED JURY INSTRUCTIONS

Plaintiff ACCU-SPEC ELECTRONIC SERVICES, INC., by and through its attorneys, MacDonald, Illig, Jones & Britton LLP, requests the following instructions be given to the jury in the trial of this case. Plaintiff reserves the right to request additional instructions and to request the withdrawal or modification of any of the following instructions if the trial of this case should make such action appropriate.

Respectfully submitted,

/s/ W. Patrick Delaney
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Accu-Spec Electronic Services, Inc.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 1

Ladies and Gentleman, it is now my duty to tell you about the law that is to be applied in this case in which you are the finders of fact. You have heard all the arguments and all of the evidence, and it is my function to charge you on the law which you are required to consider and which will govern your deliberations.

It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

Derived from: Federal Jury Practice and Instructions, Fifth Edition, Section 103.01

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 2

This is a dispute between Accu-Spec Electronic Services Inc., as Plaintiff, and Central Transport International, Inc. and Logistics Plus, Inc., as Defendants. In these instructions, I will refer to the Plaintiff as "Accu-Spec." I will refer to the Defendants as "Central Transport" and "Logistics Plus."

In January of 2003, Accu-Spec contacted Logistics Plus to arrange for a shipment of Accu-Spec's industrial x-ray machine from Fremont, California to Accu-Spec's facility in Erie, Pennsylvania. Logistics Plus did not physically transport the industrial x-ray machine from California to Pennsylvania, but made arrangements with a trucking company, Central Transport, to physically move the equipment. Central Transport is in the business of hauling freight in interstate commerce.

Thus, in this transaction, Accu-Spec is considered to be a "shipper." Logistics Plus is considered to be a "freight forwarder." Central Transport is considered to be a "motor carrier."

A law, adopted by the United States Congress, sets forth certain rules and principles concerning the relationship between shippers, freight forwarders, and motor carriers. That law establishes that a motor carrier such as Central Transport may be held liable for the actual loss or injury to property which it transports. That same law indicates that a freight forwarder, such as

Logistics Plus, may be held liable for the actual loss or injury to property for which it arranges transport. Under this law, the shipper, Accu-Spec, does not have to prove that the motor carrier or the freight forwarder acted in a careless or negligent manner in handling the equipment.

Derived from Karmack Amendment, 49 U.S.C. § 14706; Phoenix Assurance Company v. K-Mart, 977 F.Supp. 319, 324 (D.N.J. 1997); and Paper Magic Group Inc. v. J.B. Hunt Transport, Inc., 318 F.3d, 458, 461 (3d Cir. 2003).

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTIONS NO. 3

In order for a shipper, such as Accu-Spec, to recover damages from a motor carrier, such as Central Transport, or a freight forwarder, such as Logistics Plus, the shipper must establish certain facts by direct or circumstantial evidence. Specifically, Accu-Spec, as the shipper, must establish three things.

First, Accu-Spec, the shipper, must establish, by direct or circumstantial evidence, that the equipment was given to the motor carrier, Central Transport, in good condition.

Second, Accu-Spec, the shipper, must establish that the equipment arrived in Erie, Pennsylvania either damaged or destroyed.

Third, Accu-Spec, the shipper, must establish the amount of money damages which it incurred in order to repair the industrial x-ray machine.

Hams Express, Inc. v. Joseph Land & Company, Inc., 506 F.Supp. 209 (E.D.Pa. 1980), *affirmed*, 661 F.2d 914

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 4

Once Accu-Spec, the shipper, establishes that the equipment was given to Central Transport in good condition; returned from Central Transport in damaged condition; and the amount of money damages which Accu-Spec incurred, the only means by which the motor carrier, Central Transport, or the freight forwarder, Logistics Plus, can avoid liability for damages is if they can prove that the shipper caused the damage. In other words, once Accu-Spec establishes its claim, Central Transport and Logistics Plus can avoid liability only if they can prove that Accu-Spec caused the damage.

Tokio Marine and Fire Insurance Company Ltd. v. Amato Motors, Inc., 871 F.Supp. 1010 (N.D. Illinois 1994).

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 5

In civil cases such as this one, the plaintiff has the burden of proving those contentions that entitle him to relief.

When a party has the burden of proof on a particular issue, the party's contention on that issue must be established by a fair preponderance of the evidence. The evidence establishes a contention by a fair preponderance of the evidence, if you are persuaded that it is more probably accurate and true than not.

To put it another way, think if you will, of an ordinary balance scale with a pan on each side. Onto one side of the scale, place all of the evidence favorable to the plaintiff; onto the other, place all of the evidence favorable to the defendant. If the scales tip in favor of the plaintiff, your verdict must be for the plaintiff. If the scales tip in favor of the Defendants, or if the scales do not tip in either direction, your verdict must be for the Defendants.

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 6

In this case, you have heard reference to a "Bill of Lading." A bill of lading is a document used in the shipping industry. It is an acknowledgement by a motor carrier that it has received certain goods and is effectively the contract for transportation of those goods.

If you find that the bill of lading in this transaction was signed by Central Transport's driver when the x-ray equipment was first picked up in California, and that the bill of lading contains no notation of damage to the equipment or its packaging, you may consider this fact as circumstantial evidence that the equipment was delivered to Central Transport in good condition.

Acris Container Ltd. v. Regal Corrugated Box Co., Inc., 1983 U.S. Dist. Lexis 14883 at 2 (E.D.Pa. 1983).

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 7

In deciding the facts of this case, you should consider all of the evidence presented by the parties. Consideration of all of the evidence, however, does not mean that you must accept all of the evidence as true or accurate. In this connection, the evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received into evidence, regardless of who may have produced them; and all the facts which have been admitted or stipulated by the parties.

While you may consider only the evidence in the case in arriving at your findings of fact, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of common experience. An inference is not a suspicion or guess. A suspicion is a belief based on circumstances which do not amount to proof. A guess is speculation or conjecture. An inference, on the other hand, is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists. In other words, you may reach conclusions which reason and common sense lead you to reach from the facts which have been established by a preponderance of the evidence in the case.

In this case, you have heard what the law calls circumstantial evidence. Circumstantial evidence consists of facts, or circumstances, from which it is reasonable to infer the existence of another fact. For example, a man may be able to testify that it was snowing at a particular time because he looked outside and saw the snow falling. That is considered direct evidence that it is snowing. If, however, he did not actually see the snow coming down, but when he got up one morning and looked outside he saw fresh snow where there had been none the night before, he can testify to these facts and the jury may infer from those facts that it had snowed during the night. This is considered circumstantial evidence that it snowed.

Like all other evidence, circumstantial evidence is to be given such weight as you deem it appropriate.

Derived from Pennsylvania Standard Civil Jury Instruction 5.07 (2003).

Accepted ___________ Rejected ___________ Modified ___________

PLAINTIFF'S REQUESTED JURY INSTRUCTION 8

If you find that Accu-Spec has established its claim against the Defendants, you may consider the amount of money to award Accu-Spec. Under the federal law which governs the relationship between shippers, freight forwarders, and motor carriers, the amount of money damages to be awarded to the shipper is calculated by the cost to repair the goods. The cost to repair the goods can include the reasonable cost of inspecting the equipment and of shipping the equipment to the place where it was repaired, in this case, England, if you find that shipping the equipment to England was reasonable.

Paper Magic Group, Inc. v. J.B. Hunt Transport, Inc., 318 F.3d 458, 462 (3d Cir. 2003);
Oritani Sav. & Loan Ass'n. v Fidelity & Deposit Co., 744 F. Supp. 1311, 1322 (D.N.J. 1990).

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